IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revision No.363 of 2006 (O&M)

Date of Decision: November 28, 2006

Gagan Chaudhary

...Petitioner

VERSUS

M/s Balwant Singh and another

...Respondents

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

PRESENT: Mr.Puneet Bali, Advocate,
for the petitioner.

Mr.Gurcharan Singh, Advocate,
for respondent No.1.

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This order will dispose of Criminal Revisions No.363 of 2006 (Gagan Chaudhary v. M/s Balwant Singh and another) and 519 of 2006 (M/s Balwant Singh and another v. Shri Gagan Chaudhary).

Gagan Chaudhary has filed Criminal Revision No.363 of 2006 impugning the order passed by Addl.Sessions Judge, Chandigarh, whereby, while releasing the petitioner, Gagan Chaudhary, on probation, he has been directed to deposit a sum of Rs.2.6 lacs in the shape of demand draft/banker's cheque as a condition for availing the benefit of probation. The petitioner, who had been convicted by Judicial Magistrate Ist Class, Chandigarh on 5.2.2002 and sentenced to suffer rigorous imprisonment for six months, had gone in appeal against the order, wherein the present impugned order was passed directing him to deposit the sum, afore-mentioned, as a condition for his release

on probation.

M/s Balwant Singh etc., who are complainants in this case against Gagan Chaudhary, are also aggrieved against the impugned order, referred to above and hence have filed separate Criminal Revision No.519 of 2006, seeking setting-aside of the impugned order granting probation to Gagan Chaudhary and for maintaining the rigorous imprisonment of six months as awarded by the trial Court. The allegation against petitioner Gagan Chaudhary is that he is a tenant and had issued a cheque of Rs.one lac, which was the monthly rent and the same when presented was received back dishonoured with the remarks “exceeds arrangement”. The complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter called the “Act”) as such, was filed after serving a notice etc. to the petitioner. On the other hand, the stand of petitioner Gagan Chaudhary is that this cheque was issued by him as the security and not towards the payment of rent. He, thus, claims that there was no existing legal liability. It is also stated that the petitioner had offered the payment of the cheque amount to the complainant, but the same was not accepted as the complaint had in fact been filed with malafide intention. It is also stated that this offer, as made by the petitioner, Gagan Chaudhary, had been duly noticed by the Judicial Magistrate Ist Class, Chandigarh. It is pleaded that the petitioner deserves acquittal on the ground that he had offered to make the payment of the cheque amount and on account of this it was incumbent upon the Magistrate to direct the complainant to accept the amount. The case set up is that the Magistrate failed to notice that a sum of Rs.three lacs was paid as security at the time of execution of lease deed and even if this cheque had been dishonoured, the complainants were within their rights to adjust this

amount out of the security, so deposited by the petitioner. It is claimed that this cheque had not been issued in discharge of any existing liability, as already noticed. The petitioner pleads that the action of the Appellate Court in requiring the petitioner to deposit a sum of Rs.2.6 lacs for his release on probation for a period of two years amounts to punishing him twice for the same offence and hence the present Criminal Revision. As already noticed, Revision Petition No.519 of 2006 has been filed by M/s Balwant Singh etc. with the prayer that the action of the Appellate Court in releasing the petitioner, Gagan Chaudhary, on probation is required to be set-aside with direction for him to undergo the period of imprisonment awarded by the Magistrate.

The plea raised by the petitioner, Gagan Chaudhary appears to be contradictory in nature. He seems to be blowing hot and cold in the same breath. Though stating that this cheque had only been issued as a security, but still has maintained that he had offered to discharge the liability. If the petitioner, Gagan Chaudhary, had offered to discharge this liability, obviously the liability stood conceded. On that count, he cannot be heard to say that this cheque had been offered as a security only. Gagan Chaudhary, the petitioner, has even conceded that the respondents could have adjusted this amount from the security furnished by him, meaning thereby that this cheque had not been given as a security, but was issued as a liability. In this background, the trial Court as well as the Appellate Court are fully justified in recording the conviction of the petitioner under Section 138 of the Act. The main grievance of petitioner Gagan Chaudhary appears to be the directions, which have been passed by the Appellate Court in requiring him to pay a sum of Rs.2.6 lacs for his release on probation. This, as per the

petitioner, is wholly un-just and thus un-sustainable in the eyes of law.

On the other hand, Mr.Gurcharan Singh, the counsel appearing for the petitioners in Criminal Revision No.519 of 2006, has submitted that before ordering grant of probation to petitioner Gagan Chaudhary, the Court did not call for report from the Probationary Officer as is required under Section 4 of the Probation of Offenders Act, 1958, which is a mandatory condition. As per counsel, before granting probation, the Court is bound to call for the report of the Probation Officer and is required to look into the circumstances under which the crime was committed. In this regard, he has placed reliance on M.C.D. Versus State of Delhi and another, 2005(3) RCR (Criminal) 13.

Admitted position in the present case is that the petitioner, Gagan Chaudhary, has been convicted for an offence under Section 138 of the Act. He was ordered to undergo rigorous imprisonment for six months and has now been released on probation subject to payment of Rs.2.6 lacs as compensation. Can the release of the petitioner, Gagan Chaudhary, on probation be conditional, is the first issue, which may require consideration. Another issue, which may require adjudication in this case would relate to the requirement of calling for a report of the Probation Officer in terms of Section 4 of the Probation of Offenders Act. While releasing a convicted person on probation, circumstances of the case, including the nature of the offence and the character of the offender, are required to be taken into consideration. The Court instead of sentencing such a person can direct his release on his entering a bond with or without security etc. It is in this context that Section 4(2) of the Probation of Offenders Act provides that before making any order under sub-section (1), the Court is to take into

consideration the report, if any, of the Probation Officer concerned in relation to the case. No doubt, it has been held that while releasing the offender on probation, the report from the Probation Officer is required to be called, but it has also been held that in the absence of report, the Court can decide the matter on several materials available before it. Though calling of the report may be mandatory, but said report, when received, is not binding on the Court. The offence alleged in the present case is for not discharging the liability on account of dishonour of the cheque. It is noticeable that the offence under Section 138 of the Act is punishable with an imprisonment for a term which may extend to two years or with fine, which may extend to twice the amount of the cheque or with both. Thus, un-like other offences, fine to the extent of twice the amount of cheque is one of the punishment prescribed under this section. This section, as such, is clearly distinguishable from other penal sections where fine alone itself may not be a punishment. Otherwise also, the basic aim of legislating this offence of dishonouring the cheque as a criminal liability was aimed at to ensure only the payment of the amount of the cheque. With this aspect in view, the punishment in the form of fine to the extent of twice the amount of the cheque has been so prescribed. The consideration for grant of probation in cases under Section 138 of the Act, as such, may be required to be viewed with some difference. In the present case, the release of the petitioner has been conditioned with the term of deposit of a sum of Rs.2.6 lacs for dishonour of a cheque amounting to Rs.one lac. Obviously, the compensation awarded in this case is even more than the punishment prescribed under Section 138 of the Act. Ordinarily the requirement of seeking a report from the Probation Officer may be mandatory and insisted

upon, but having regard to the different nature of punishment that is prescribed under the Act, this legal requirement held to be mandatory may not visit with all the vigor to such an offence that it may have in respect of other offences. Since the Appellate Court has kept in view the special requirement of this offence while ordering the release of the petitioner on probation, I am not inclined to interfere in this order on the ground that no report from Probation Officer was called for in this case. Even the case M.C.D. (supra), relied upon by the counsel for the petitioners in Criminal Revision No.519 of 2006, may not strictly apply to the facts of the present case. The offender therein was a previous convict, which fact, could not be brought to the notice of the Court while releasing the said offender on probation. In any case, the release of petitioner Gagan Chaudhary, in the present case is a conditional one. This condition imposed by the Appellate Court cannot be said to be un-reasonable or un-just. The petitioner, Gagan Chaudhary, had been proceeded against for dishonouring of the cheque and his release on probation un-conditionally would have resulted in an advantage to him for his criminal mis-conduct. The award of compensation otherwise also is justified under the provisions of Section 5 of the Probation of Offenders Act, which reads as under:-

> "5. Power of court to require released offenders to pay compensation and costs.-
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> (1)The court directing the release of an offender under section 3 or 4, may, if it thinks fit, make at the same time a further order directing him to pay-
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> (a) such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the

offence; and

(b) such costs of the proceedings as the court thinks reasonable.

(2) The amount ordered to be paid under sub-section (1) may be recovered as a fine in accordance with the provisions of section 386 and 387 of the Code.

(3) A civil court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation under sub-section (1) in awarding damages."

It is, thus, clear that while directing the release of an offender under Section 3 or 4, the Court can further direct him to pay such compensation as the Court thinks reasonable for the loss or injury caused to any person by the commission of offence.

Accordingly, I do not find any infirmity in the impugned order vide which the petitioner, Gagan Chaudhary, has been ordered to be released on probation with condition that he would deposit a sum of Rs.2.6 lacs as compensation. I am not inclined to interfere in the order of granting compensation and releasing petitioner Gagan Chaudhary on probation as this is clearly aimed at compensating the respondent-M/s Balwant Singh and others, who are also the petitioners in the connected revision petition. I would, thus, decline to interfere in the impugned order and would dismiss both the criminal revision petitions. The impugned order passed by the Appellate Court is thus maintained.

November 28, 2006 (RANJIT SINGH)
ramesh JUDGE